

ATTACHMENT N

AFFIDAVIT

Roles and responsibilities of Agriculture Commissioner

1. I, HUGH E. WEATHERS, being first duly sworn, do depose and say that I am over the age of eighteen years of age, of sound mind, and as the duly elected South Carolina Commissioner of Agriculture, have the authority to execute the foregoing Affidavit.

Roles and responsibilities

2. Since 2005, I have served as the South Carolina Commissioner of Agriculture. The Office of the Commissioner of Agriculture is established by the South Carolina State Constitution. As a constitutional officer, I am elected by the people of the state in elections held every four years.
3. I am submitting this Affidavit as the duly-elected South Carolina Commissioner of Agriculture.
4. As Commissioner of Agriculture, I am in charge of the South Carolina Department of Agriculture (SCDA), consisting of 4 divisions and 134 full-time employees. The mission of SCDA is to promote and nurture the growth and development of South Carolina's agriculture industry and its related businesses while assuring the safety and security of the buying public.
5. As Commissioner of Agriculture, I oversee all four divisions of the department. SCDA's Agency Operations Division consists of Administration, Human Resources, Information Technology, and the Office of the Commissioner. SCDA's Agricultural Services Division consists of the South Carolina Agriculture Commission, Marketing and Promotion, Agritourism Program, State Farmers Markets, Market News Service and the Grading and Inspection Program. SCDA restructured and reorganized the regulatory departments into a new and efficient division. The Consumer Protection Division (CPD) is comprised of five (5) main departments: Produce Safety Department, Laboratory Services Department, Consumer Services Department, Metrology Services Department, and Feed/Food Safety & Compliance Department of SCDA. There is a unified effort by these five groups to fulfill and comply with their legislated charge and each unit is dependent on the other to complete tasks as required by state law and regulation. The External Affairs and Economic Development division serves the agricultural industry to promote and advocate for the growth of existing and new agribusiness opportunities throughout the state. This is done by working with elected officials and business/state leaders at all levels to push for an efficient policy and economic development environment.

First hand, Personal Knowledge of Farming

6. In addition to being the South Carolina Commissioner of Agriculture, I am a fourth generation farmer and have farmed land that my family has owned since the late 1800s. I still reside at my family farm, located in Orangeburg County. My family farm grows the following crops: corn, soybeans, peanuts, cotton and wheat. Historically, my family's farming was centered on dairy enterprises and farming for over 80 years.

7. During my career, I have been honored by many different agricultural organizations including the South Carolina Farm Bureau, the Young Farmers Association, Farm Credit and I currently serve as a board member, the South Carolina FFA, the South Carolina 4-H and the South Carolina Dairy Association.

Tobacco Data for South Carolina

8. In the 2012 Census of Agriculture, South Carolina was ranked number five in the United States for tobacco sales by commodity group.
9. Since the passage of the Tobacco Transition Payment Program (TTPP or commonly referred to as the tobacco buy-out) in 2004, the industry has been in a period of change. This program was established to help tobacco quota holders and producers transition from the Depression-era tobacco quota program managed by USDA-Farm Service Agency to a free market system. As a result of TTPP, the number of tobacco farmers in our state was significantly reduced. The Census of Agriculture is conducted every five years by USDA-National Agricultural Statistics Service; their results show the following changes in tobacco production in South Carolina:
 - a. 1987 Census of Agriculture: 2,519 farms harvested over 87-million pounds of tobacco grown on 42,666 acres.
 - b. 1992 Census of Agriculture: 1,965 farms harvested over 104-million pounds of tobacco grown on 50,194 acres
 - c. 1997 Census of Agriculture: 1,275 farms harvested over 125-million pounds of tobacco grown on 54,660 acres.
 - d. 2002 Census of Agriculture: 873 farms harvested over 57.5-million pounds of tobacco grown on 30,241 acres.
 - e. 2007 Census of Agriculture: 260 farms harvested over 44.6-million pounds of tobacco grown on 20,084 acres.
 - f. 2012 Census of Agriculture: 136 farms harvested over 25.9-million pounds of tobacco grown on 12,155 acres.

Concerns Regarding the Fairness of the Proposed Settlement for South Carolina Tobacco Farmers, both Past and Present

10. In my role as Commissioner for the South Carolina Department of Agriculture and Consumer Services, I have followed the litigation relating to the efforts of the former members of the Flue-Cured Tobacco Cooperative Stabilization Corporation. I am familiar with the *Fisher/Lewis* cases in the state court, as well as the *Speaks* case before Your Honor.
11. As Commissioner, I have serious concerns about the proposed settlement in the *Speaks* case. Based on the information I have gathered to date, I have serious doubts about the

fairness of the settlement to former and current tobacco farmers in South Carolina, as well as in all states in which there are flue-cured tobacco farmers.

12. Based on information and belief, the objection process in the *Speaks* case has been rushed and unnecessarily complicated. The written letter and triplicate submission process outlined in the Long Form Notice is counter-intuitive and discourages class members from voicing objections. The objection process does not provide guidance forms or options for electronic submission through website or by email, without the need to mail three separate letters. Moreover, the timing of the settlement raises concerns. The *Fisher/Lewis* cases have been ongoing in state court for almost 12 years prior to the announced settlement in *Speaks*. The North Carolina Supreme Court only recently affirmed the class certification on December 21, 2016. A relative short time thereafter and prior to additional discovery on the merits proceeding in the state action, plaintiffs in the *Speaks* case reached a settlement on September 8, 2017. Lastly, given the impacts this settlement may have on the *Fisher/Lewis* cases, the December 20, 2017 deadline to object simply does not provide enough time for class members to adequately understand the terms of the settlement and to make an informed decision.
13. There are also inconsistencies in the Long Form Notice provisions and the Court's Order Preliminarily Approving Settlement. For example, paragraph 21 of the Court's Order states in part that "to object, the Objector must provide to the Claims Administrator (who shall forward it to Class Counsel and Counsel for Defendant)." However, in the Long Form Notice under the instruction for objecting to the settlement, it requires class members to provide and mail copies of the objection to both class counsel and defense counsel.
14. Additionally, there is a lot of confusion regarding the relationship of the *Fisher/Lewis* state cases and the *Speaks* case in federal court. I worry that the *Speaks* notice overlapped with the *Fisher/Lewis* notice has confused many South Carolina farmers. There needs to be more time to allow class members to educate themselves on the implications of parallel proceedings.
15. Based upon the information provided in the settlement documents and the settlement website at <https://fluecuredtobaccosettlement.com>, the *Speaks* case will have the effect of ending the class action pending in state court. The *Lewis/Fisher* cases have been ongoing since 2005 and is currently scheduled to go to trial in 2018.
16. I also have grave concerns regarding the fairness of the amount of the settlement. Based on information from named plaintiffs in the state court action in *Fisher/Lewis*, Defendant U.S. Tobacco has previously offered more than 5 times the amount of what is offered in the *Speaks* settlement. Additionally, from information shared by Defendant to its members at its last annual meeting, it appears that U.S. Tobacco Cooperative Inc's current assets total in excess of \$500 million. Also, I am concerned that under the *Speaks*

settlement recovery for Group 1 will be capped at \$15,000 when in many cases, farmers have paid into the co-op in excess of that amount in just a single year.

Further, Affiant sayeth not.

This the 19th day of December, 2017.



Hugh E. Weathers
Commissioner
South Carolina Department of Agriculture

Sworn to and subscribed before me,
This the 19 day of December, 2017.



NOTARY PUBLIC

My Commission Expires: _____
[Notary Seal]

